IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1133 OF 1992

Joaquim Francis Tellis,
Indian Inhabitant of Bombay,
residing at D4/1, I.A.A.I.
Residential Colony, Sahar Road,
Opposite P. & T. Colony,
Vile Parle (East),
Bombay - 400 99 (deleted)

Mrs.Inez Joaquim Tellis,
Indian Inhabitant of Bombay,
wife and legal heirs of late
Joaquim Francis Tellis,
residing at C/o.Mrs.C.
Rodrigues, Laxmi Building,
Flat No.2, Off Turner Road,
Bandra (West),
Bombay - 400 050 .. Petitioner.

V/s.

1. The International Airports
Authority of India, a corporate
Body duly established under
the provisions of the
International Airport
Authority Act, 1971, carrying
on its usual business from
the Office of the Airport
Director, Bombay Airport,
Santacruz, Bombay - 400 099

2. R.J. Treasurywala,
Indian Inhabitant having his
office at Airport Director,
I.A.A.I., Calcutta Airport,
Calcutta .. Respondents.

Mr.A.V. Bukhari for the petitioner.

Mr.S.K. Talsania with Mr.Vatsal Mehta i/b. B. Kanga & Girdharlal for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 22ND JULY, 2005.

ORAL JUDGMENT (Per R.M. Lodha, J.)

This writ petition was filed by Joaquim Francis Tellis before this Court invoking Article 226 of the Constitution of India. He is dead and in his place his legal representatives have been substituted. For the sake of convenience, we shall refer the original petitioner as the deceased petitioner.

2. The deceased petitioner joined the services of the International Airport Authority of India-respondent No.1 in the year 1976. He was promoted as a Deputy General Manager (operations) in the year 1986. By the office order dated November 27, 1990 the deceased petitioner who was working as Deputy General Manager (Airport) Bombay Airport was promoted on officiating basis as General Manager (Operations) and posted at head quarters at New Delhi. The deceased petitioner made a representation to the Chairman of the respondent No.1 on November 30, 1990 raising the grievance that he ought to have been given regular promotion to the post of General Manager (Operations) and by elevating him to the post of General Manager (Operations) on officiating basis, he has been humiliated. He raised the grievance that though his junior has been promoted to the post of

General Manager (Operations) his case has been overlooked for regular promotion. He made another representation to the Chairman on January 2, 1991. In the meanwhile, the petitioner was asked to continue on the post at Bombay as officiating General Manager (Operations).

3. By the office order dated September 9, 1991, the deceased petitioner was asked to report to the head quarters at Delhi with immediate effect and on his reporting there, he would be designated as General Manager (GFS). The deceased petitioner instead of joining the duties at head quarters continued to make representation after representation to the Chairman. On January 27, 1992, the deceased petitioner was informed that his representations have been considered from time-to-time and the position has also been explained to him. As regards promotion to the post of General Manager (Operations), he was informed that the said promotion is on selection basis (merit-cum-seniority) wherein besides the rating in the ACRs and length of service in the grade, performance in the interview is also assessed by the Departmental Promotion Committee as per the norms established. The promotion is made on the basis of the panel position as determined by the Departmental Promotion Committee. The deceased petitioner was informed that based on the position in

the panel, Mr.Treasurywala has been given regular promotion, there being one clear vacancy. The deceased petitioner was given officiating promotion and he was told that as and when the regular clear vacancy occurs, he would be given regular promotion.

4. The petitioner again made representation to the Chairman reiterating his grievance about the regular promotion to the post of General Manager (Operations). He did not join his duties at headquarters. On March 20, 1992, memorandum was issued directing the deceased petitioner to join duties as General Manager (GFS) at Delhi latest by March 31, 1992 failing which appropriate action will be taken against him. The memorandum dated March 20, 1992 reads thus :

"MEMORANDUM

1. Please refer to IAAI Headquarters' letter of even number dated 27th January 1992 and your representation dated 7th February 1992.

2. Your last representation dated 7th February 1992 has been seen by the Competent Authority. All the substantive issues, brought out in your representations, have already been addressed to in Hqrs. letter of even reference dated 27.1.1992.

3. It will be appreciated that non compliance of Head quarters Order No.PERS-II/11-7/1/90 dated 9.9.1991 tantamounts to disobedience.

4. You are directed to report for duty as General Manager (OPS) at IAAI Head quarters latest by 31st March 1992, failing

which appropriate action, as per rules, will be taken."

5. The deceased petitioner did not join his duties and wrote to the Chairman that the order dated September 9, 1991 be deferred to enable him to report duty back to Bombay Airport. On April 23, 1992 another memorandum was issued to the deceased petitioner, that reads thus :

"memorandum

WHEREAS Shri J.F.Tellis, Offg. GM(OPs) had been relieved by the Airport Director, Bombay vide his order No.AAB/Admn/1/7720 dated 23rd September, 1991 with instructions to report to Hqrs. on his transfer as per Hqrs. office Order No.PERS/1001/Misc/98/3512 dated 9th September, 1991.

2. WHEREAS Shri Tellis instead of complying with the instructions contained in the Office orders referred to above resorted to absenting himself authorisedly inspite of the position being explained to him on the representations made by him from time to time and whereas Shri Tellis was finally instructed vide memorandum No.pers-II/1107/1/90/7617 dated 20.3.1992 to report latest by 31.3.1990, which he failed to comply. Notwithstanding his representation it was incumbent on Shri Tellis to comply with the orders and to report for duty at Hqrs.

3. AND WHEREAS the unauthorised absence of Shri Tellis for a period of over 7 months inspite of repeated advice to report for duty is tantamount to abandonment of service under Clause 31(2)(vi) of IAAI (General Conditions of Service) Regulations, 1980.

4. NOW THEREFORE, keeping in view the principle of natural justice a final opportunity is given to Shri Tellis to report for duty latest by 11.5.1992 at IAAI HQRS failing which it will be presumed that he is no longer interested in the employment

> of IAAI and is voluntarily abandoning the job of his own volition entailing consequential action provided in the guidelines/Regulations referred to above."

6. The deceased petitioner did not comply with the memorandum and instead sent the representation. Then again on May 20, 1992, the deceased petitioner was issued memorandum calling upon him to report for duty at head quarters at Delhi latest by June 1, 1992 failing which his name shall stand struck off on account of abandonment of service. The memorandum dated May 20, 1992 reads thus :

> "MEMORANDUM
>
> WHEREAS Shri JF Tellis, Offg. General Manager (Operations) had been relieved by the Airport Director, Bombay vide order No.AAB/Admn/1/7720 dated 23rd September, 1991 with instructions to report to Hqrs. on his transfer as per Hqrs. office Order No.PERS/1001/Misc./90/3512 dated 9th September, 1991.
>
> WHEREAS Shri Tellis instead of complying with the instructions contained in the office orders referred to above resorted to absenting himself unauthorizedly inspite of the position being explained to him on the representations made by him from time to time and whereas Shri Tellis was finally instructed vide memorandum No.PERS-1107/1/90/7617 dated 20.3.1992 to report latest by 31.3.1992, which he failed to comply.
>
> WHEREAS keeping in view the principle of natural justice final opportunity was given to Shri Tellis to report for duty latest by 11.5.1992 vide memorandum No.PERS-II/1107/1/90/XII/228 dated 23.4.92 but Shri Tellis avoided the receipt of said communication in time as he was not found available and reported to have left for Goa. Later, the said letter was delivered to him on

13.5.192. It is observed that inspite of having received the communication giving him the final opportunity to report for duty at IAAI Hqrs. new Delhi, Shri Tellis did not comply to the same and again rescrted to the practice of giving representation on the same issues which have been clarified to him time and again. From the representation it is evident that Shri Tellis is only prolonging the issue while he is not interested in reporting for work at the station where the post is and where he has been transferred. Notwithstanding the issues raised by him, which otherwise have been clarified, it was incumbent on Shri Tellis to comply with the lawful and reasonable orders and report for duty at Hqrs.

AND WHEREAS the unauthorised absence of Shri Tellis for a prolonged period of over 7 months inspite of repeated opportunities force the Management to presume that he is no longer interested in the employment of IAAI and has voluntarily abandoned the service. However, still keeping in view the principle of natural justice he is again afforded an opportunity as a final resort to report for duty at IAAI Hqrs., New Delhi, latest by 1st June, 1992 failing which his name will struck off the role of IAAI on account of abandonment of service in accordance with clause 31(2)(vi) of IAAI (General Service Conditions) Regulations 1980, without any further notice to him."

7. The deceased petitioner did not join his duties despite repeated memorandum and consequently office order was issued on June 5, 1992 striking off the name of the petitioner from the roll of the respondent No.1.

8. The order dated June 5, 1992 is thus :

INTERNATIONAL AIRPORTS AUTHORITY OF INDIA

Yeshwant Place

Chanakyapuri,
New Delhi 31.

No.PERS-II/1107/1/90-XII(Part) 913

5th June, 1992

O R D E R

. WHEREAS Shri J.F. Tellis Offg. General Manager (Operations) was given a final opportunity by way of memorandum No.PERS-II/1107/1/90/XI/1628 dated 20th May, 1992 to report for duty at IAAI Hqrs. New Delhi, latest by 1st June, 1992.

. AND WHEREAS SHRI J.F. Tellis, has failed to report for duty by the stipulated etc.

. NOW THEREFORE, it is clear that Shri J.F. Tellis is no longer interested in employment of IAAI and has services stand terminated with immediate effect and his name is struck off from the rolls of IAAI is accordance with Clause (3)/(2)(VI) of IAAI 9 (General Condition of Service) 1980.

. The period from 23.9.1991 till the date of issue of this order will be treated as unauthorised absence for all intents & Purposes. Sd/- (V.K. MATHUR) Chairman

9. The aforesaid order dated June 5, 1992 is under challenge.

10. As already indicated above, upon the death of the original petitioner, his legal representatives have been brought on record.

11. Mr.Bukhari, the learned counsel for the petitioners submitted that great injustice was done to the deceased petitioner by denying him promotion to the post of the General Manager (Operations) on

regular basis from March 1, 1988. Four juniors to the deceased petitioner were promoted on the post of the General Manager though they were not eligible and in so far as the deceased petitioner was concerned instead of promoting him on regular basis, he was sought to be transferred as General Manager (Operations) on officiating basis at headquarters which was illegal. Mr.Bukhari also submitted that the order dated June 5, 1992 came to be passed under clause 31(2)(vi) of the International Airport Authority of India (General Conditions of Service) Regulations, 1980 which do not have any statutory force. Relying upon Section 38 of the International Airport Authority Act, 1971 the learned counsel submitted that since the Regulations, 1980 have not been approved by the Central Government, they do not have statutory force and the impugned order dated June 5, 1992 is void ab-initio. The learned counsel would also contend that by order dated June 5, 1992, the petitioner's services were sought tobe terminated without affording him any opportunity of hearing and without holding any enquiry. That the continuous absence without prior permission is misconduct and if major penalty of termination of service was to be awarded, a full-fledged disciplinary proceedings ought to have been held. Mr.Bukhari submitted that the order dated June 5, 1992 deserves to be set aside and since the employee is dead, the legal

representatives are entitled to monetary benefits.

12. We considered the submissions of the learned counsel for the petitioners. For the reasons that we indicate, we are unable to accept them.

13. As already noticed by us vide its order dated November 27, 1990 the deceased petitioner was promoted on officiating basis as General Manager (Operations) and posted at head-quarters at New Delhi. He made representation to the Chairman and was asked to continue at Bombay. However, by office order dated September 9, 1991, the deceased petitioner was asked to report to the head-quarters at Delhi with immediate effect and on reporting there he would be designated as General Manager (GFS). Instead of reporting his duty at head-quarters, Delhi, the deceased petitioner went on avoiding the same by making representation after representation. By communication dated January 27, 1992 he was clearly informed that on the basis of merit-cum-seniority the post of General Manager (head quarters) which was lying vacant has been filled in by promotion and Mr.Treasurywala has been promoted as per the panel position submitted by the Departmental Promotion Committee. The deceased petitioner was dissatisfied and despite repeated memorandum refused to report for duty at headquarters at Delhi. The

memoranda dated March 20, 1992, April 23, 1992 and May 20, 1992 have already been referred to above and that would show that inspite of repeated warnings that action would be taken against him if he did not join the duty, the deceased petitioner willfully flouted the directions issued to him. The fact of the matter is that all his representations were decided and dealt with and communicated to the deceased petitioner, but he refused to obey the warnings given to him. In this backdrop when the deceased petitioner remained absent voluntarily for more than seven months, his services were brought to an end by order dated June 5, 1992, the same cannot be faulted.

14. Even if we assume that the International Airports Authority of India (General Conditions of Service) Regulations, 1980 were not approved by the Central Government and, therefore, have no statutory force, we find no difficulty in holding that the said regulations which were framed by the International Airport Authority of India, during the pendency of consideration of approval by the Central Government, would be treated as administrative instructions and if the respondent No.1 acted under the said administrative instructions, particularly clause 31(2)(vi) which provided that if an employee remains absent without any prior permission for a period of

two months he will be deemed to have abandoned voluntarily and his services will be terminated without notice, the action cannot be faulted.

15. The learned counsel for the petitioner contended that the said rule came to be amended by headquarters that provided that in the cases falling under Clause 31(2)(vi), the normal disciplinary action for absence without intimation/prior permission may be taken and termination of the service may be made after holdin domestic enquiry. The amendment upon which reliance has been placed by the learned counsel for the petitioner reads thus :

> . "Though sub-regulation 31(vi) of IAAI (General Conditions of Service) Regulations provides for termination of service without any notice in such cases, it is, however, advised that in such cases normal disciplinary action for absence without intimation/prior permission may be taken and termination of the service may be made after holding domestic enquiry."

16. The amendment is in the nature of advice and cannot be held to be mandatory by providing that in all cases falling under clause 31(2)(vi) where an employee had remained absent without prior permission for more than two months, disciplinary proceedings must be initiated against him. The facts that we have noticed above are glaring enough indicating the defiant attitude on the part of the deceased petitioner in not obeying the direction of the

respondent No.1 in joining his duties at head-quarters unless he was regularly appointed to the post of General Manager (Operations).

17. The deceased petitioner had remained absent for more than seven months and despite repeated memoranda did not report for duty. This clearly makes out a case of abandoning voluntarily the service and in this backdrop when the name of the deceased petitioner was struck off from the roll of the respondent No.1 and his services came to be terminated, no fault can be found.

18. The learned counsel for the respondent relied upon the judgment of the Supreme Court in the case of Pyare Lal Sharma V/s. Managing Director, Jammu & Kashmir Industries Ltd., Srinagar [AIR 1989 Supreme Court 1854]. He also relied upon two other judgments of the Supreme Court in the case of Syndicate Bank V/s. General Secretary, Syndicate Bank Staff Association & Another [(2000) 5 Supreme Court Cases 65] and Punjab and Sind Bank & Ors. V/s. Sakattar Singh [2001 I CLR 468]. In the facts of the case that we have already noticed above, it is not necessary to deal with the said judgments at length but suffice it to say that on the basis of the administrative instructions (we say so since the regulations were not approved by the Central Government), the absence of the deceased petitioner

for more than seven months without prior permission justified the termination of service thereunder.

19. The writ petition has accordingly no merit and is dismissed with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)